



KENNESAW CLAIMS BRANCH  
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kennesaw.clm@aoins.com

December 23<sup>rd</sup>, 2022

Lester Custom Homes LLC  
2980 Fallwood Dr NW  
Marietta, GA 30064-6223

RE:    Claim Number:                    300-0753908-2022  
       Insured:                            Lester Custom Homes LLC and Georgia Contractors Group  
   LLC  
       Reported Date of Loss:           07/01/2022  
       Policy Number:                    80378862  
       Subject:                            **Reservation of Rights (RoR)**  
       Loss Location:                    2132 Shillings Chase Dr NW  
   Kennesaw, GA 30152-4174

***REGULAR & CERTIFIED MAIL - RETURN RECEIPT REQUESTED***

Dear Lester Custom Homes LLC,

This letter is in reference to a claim that Auto-Owners Insurance Company received for water runoff on a neighboring property next to a construction site owned by you. We insure Lester Custom Homes LLC and Georgia Contractors Group LLC under a tailored protection policy, policy number 80378862, with effective dates of March 29<sup>th</sup>, 2022 through March 29<sup>th</sup>, 2023.

As we understand the claim, you were building a home on land owned by you. The owner of the property next door has alleged negligence on your part of not maintaining erosion fencing and grading issues causing the water to back up on their property.

We refer you to your Commercial and General Liability Coverage form, form CG 00 01 04 13 which reads:

***COMMERCIAL GENERAL LIABILITY  
COVERAGE FORM***

<b>EXHIBIT</b> <b>2</b>
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*Various provision in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.*

*Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.*

*The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured. Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.*

## **SECTION I – COVERAGES COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

### **1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:*

- 1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and*
- 2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.*

*No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.*

- b. This insurance applies to "bodily injury" and "property damage" only if:*
- 1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";*
  - 2) The "bodily injury" or "property damage" occurs during the policy period; and*
  - 3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed*

*insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.*

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.*
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:*
  - 1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;*
  - 2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or*
  - 3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.*
- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".*

## **2. Exclusions**

### ***f. Pollution***

- 1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":*
  - a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:*
    - i. "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;*

- ii. *"Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or*
  - iii. *"Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";*
- b) *At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;*
- c) *Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:*
  - i. *Any insured; or*
  - ii. *Any person or organization for whom you may be legally responsible; or*
- d) *At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:*
  - i. *"Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;*
  - ii. *"Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor;*  
*or*
  - iii. *"Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".*
- e) *At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".*

- 2) *Any loss, cost or expense arising out of any:*
- a) *Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or*
  - b) *Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".*

*However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.*

We wish to advise you we are proceeding to defend this claim under a reservation of rights. Auto-Owners Insurance Company reserves all rights and defenses which it has in connection with this policy. Any activity on our part by way of investigation and/or settlement which we may undertake does not constitute a waiver of any of our rights.

We are issuing this reservation due to the suit received in our office on 12/31/22. As such, we will refer this demand to coverage counsel and we intend to file a declaratory action.

We have retained attorney M. Boyd Jones of the firm Bush, Reed, Jones & Leeper, P.C. His contact information is as follows:

M. Boyd Jones  
(770)629-0154  
639 Whitlock Ave SW  
Marietta, GA 30064

This correspondence is not intended to be an exhaustive statement of Owners Insurance Company's position concerning its coverages under the policy. Owners Insurance Company's coverage determination is based upon the policy provisions, the information you have provided and Owners Insurance Company's own investigation. If you disagree with our determination, or if there is any additional information you believe to be relevant to the question of coverage, or if you believe that the information upon which Owners Insurance Company has relied is not accurate, please advise us and forward any additional relevant information for our review. Any further investigation of the claim shall not serve as a waiver of any rights under the applicable policy of insurance.

All rights, terms, condition, and exclusions in your policy are in full force and effect and are completely reserved. No action by any employee, agent, attorney or other person on behalf of Owners Insurance Company, or hired by Owners Insurance Company on your behalf, shall waive or be construed as having waived any right, term, condition, exclusion or any other provision of the policy.

Sincerely,

A handwritten signature in brown ink, appearing to read "Beau Watkins", with a stylized flourish at the end.

Beau Watkins  
Field Claim Representative  
Auto-Owners Insurance  
(770)424-6582 X 55880